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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,343	08/23/2004	Walter Otto Repple	752-06US	5920

23716 7590 10/14/2009
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EXAMINER

WEINSTEIN, LEONARD J

ART UNIT	PAPER NUMBER
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3746

MAIL DATE	DELIVERY MODE
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10/14/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/505,343	Applicant(s) REPPLE ET AL.	
	Examiner LEONARD J. WEINSTEIN	Art Unit 3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2009 and 30 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to the amendment of July 17, 2009 and the supplemental remarks submitted on September 30, 2009. In making the below rejections and/or objections the examiner has considered and addressed each of the applicant's arguments.

Specification/Priority

2. The examiner acknowledges the applicant's attempt to properly claim priority to the prior filed US application, however the language chosen by the applicant is unorthodox and does not clearly state the relationship between the cited documents. The examiner suggests amending the specification to include the following (application numbers and dates to be filled in by applicant:

"This application, filed as a National Phase application under 35 USC 371 from PCT/CA00/000000 having an international filing date of XXX X, 200X, is a continuation-in-part application of: US Patent application Serial No. XX/XXXXXXX filed XXX X, 200X."

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory

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double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1, 8, 12, 20, 21, 25-27, and 29 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 6,887,046 in view of Arnold US 2002/0187061 A1. The elements of claim 1 of instant application are followed here with a reference number for the patent that includes the claim number and the paragraph of the claim number where the limitation of the instant invention is claimed by the patent. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the application and the patent teach the combination set forth in the claims disclosing a coolant pumping apparatus (1-¶1), an apparatus with fixed walls (1-¶2), a motor driven impeller (1-¶3) that lies inside a pumping chamber (1-¶4), the walls of the pumping chamber include a radiator port (1-¶5), for communication between the pumping-chamber and a radiator, and the pump includes a mechanical radiator-port-closer (1-¶6), the radiator port moveable in a port closure mode (1-¶7), a radiator port thermal unit (1-¶12), a coolant temperature sensor, a fixed element and thermally movable element, and a radiator port driver (1-¶13-14), a set of swirl vanes (1-¶8), the swirl vanes arranged to impart a rotary swirl motion (1-¶9), a vane mounting structure (1-¶10), the swirl vanes further being mechanically movable in a vane orientation mode (1-¶11), and a vane orientation guide and swirl vane thermal unit with the limitations of the claim 2 which set forth that a thermal driver subsequently acts as the thermal unit for the swirl vane during operation. The prior patent does not claim the limitations that are taught by Arnold for a pump wherein a set of swirl vanes 22, a port 20, and a port closer 34 are located inside a pumping chamber. It would have been

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obvious to one having ordinary skill in the art at the invention was made to provide coolant pumping apparatus having a set of swirl vanes, a radiator port and a radiator port closer as taught in the prior patent, and modify the arrangement of these component such that each is arranged inside of pumping chamber, as taught by Arnold in order to improve the operation of the vanes and increase the efficiency of the pump (Arnold - ¶0010).

Allowable Subject Matter

5. Claims 2-4, 6-7, 9-11, 19, 22-24, 28, and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Response to Arguments

7. The applicant's arguments provided in the response of September 30, 2009 have been fully considered and are not persuasive. The applicant states the examiner gave no indication what portion of the US Patent US 6,887,046 was considered and referred to in the office action of July 6, 2009. The applicant states "the examiners tabled a new variant of one of the pumping apparatuses disclosed in US 6,887,046" and the examiner has disregarded the rule that when considering a claim of an instant application would be obvious of the invention defined in the claim of the referenced prior application or patent, the disclosure of the referenced prior application or patent may not be used. MPEP §804 (II)(B)(1). The examiner agrees that this is the rule but is unclear as to how this applies to the rejection listed above.

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The examiner notes that in office action of July 17, 2009 and the rejection above it is stated that

Claims . . . are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over **claim 2 of U.S. Patent No. 6,887,046** in view of Arnold US 2002/0187061 A1. **The elements of claim 1 of [the] instant application** are followed here with **a reference number for the patent that includes the claim number and the paragraph of the claim number** where the limitation of the instant invention **is claimed by the patent**. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the application and the patent teach **the combination set forth in the claims disclosing** a coolant pumping apparatus **(1-¶1)** . . . and a vane orientation guide and swirl vane thermal unit **with the limitations of the claim 2** . . .

Office Action of July 7, 2009, pg. 2-3. The examiner has clearly made a reference to the subject matter **within the claims** of the patent (US 6,887,046) by referencing the claim number and the paragraph within that claim that corresponds to a limitation that of the instant application. For example the limitation of claim 1 **of the instant invention** of "the swirl vanes further being mechanically movable in a vane orientation mode" is **claimed** in "([claim] 1- ¶11 [of claim 1])." The examiner asserts that is clear that in the example above the limitation **of the application** cited **is claimed** in the **11th paragraph** of **claim 1 of the patent** US 6,887,046. Therefore the applicant's assertion that the examiner has disregarded the rule set forth in MPEP §804 (II)(B)(1).

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEONARD J. WEINSTEIN whose telephone number is (571)272-9961. The examiner can normally be reached on Monday - Thursday 7:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on (571) 272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Devon C Kramer/

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Supervisory Patent Examiner, Art
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/Leonard J Weinstein/
Examiner, Art Unit 3746